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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,558	03/21/2001	John T. Andrews	18433.00	2627

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EXAMINER

HO, THOMAS Y

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/812,558

Applicant(s)

ANDREWS ET AL.

Examiner

Thomas Y Ho

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear from the disclosure how the keeper receives a chain, charm, and ornamental item all at the same time.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said battery" in line 6. There is insufficient antecedent basis for this limitation in the claim. Claims 2-10 depend from claim 1 and are likewise rejected.

Claim 11 recites the limitation "said battery" in line 5. There is insufficient antecedent basis for this limitation in the claim. Claims 12-14 depend from claim 11 and are likewise rejected.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-2, 4-7, and 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Klein (USPN6419649).

As to claim 1, Klein discloses a vibrating jewelry item comprising:

- A power source 13.
- A vibrating motor unit 14.
- A housing having a first 11b and second section 12 dimensioned and configured to contain said battery 13 and said vibrating motor unit 14.
- Each said first 11b and second sections 12 having mating ends 39 and 40 that connect to one another.
- An actuating means for activating said vibrating motor 14 (col.4, ln.33-37).
- An attachment means 18 for securing the vibrating body jewelry item to a body part of a user.

As to claim 2, Klein discloses a vibrating jewelry item wherein:

- Said power source is a battery 13.

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As to claim 4, Klein discloses a vibrating jewelry item wherein:

- Said ends of said first 11b and second sections 12 of said housing have mating snap-fit structures 39 and 40 for connecting said sections together.

As to claim 5, Klein discloses a vibrating jewelry item wherein:

- Said second section 12 of said housing includes a recess.
- Said power source is a battery 13.
- Said battery being received on said recess (fig.5).

As to claim 6, Klein discloses a vibrating jewelry item wherein:

- Said actuating means for activating said vibrating motor unit 14 is a post 18 having at least one end dimensioned and configured to threadingly fit through said recess in said second section 12 of said housing, and move said power source 13 onto said vibrating motor unit 14 thereby activating said vibrating motor unit 14. (col.4, ln.33-37, ln.46-66).

As to claim 7, Klein discloses a vibrating jewelry item wherein:

- Said attachment means for securing the vibrating body jewelry item to a body part of a user is a keeper 26.

As to claim 11, Klein discloses a vibrating jewelry item comprising:

- A power source 13.
- A vibrating motor unit 14.
- A housing dimensioned and configured to contain said battery 13 and said vibrating motor unit 14.
- An actuating means for activating said vibrating motor 14 (col.4, ln.33-37).

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- An attachment means 18 for securing the vibrating body jewelry item to a body part of a user.

As to claim 12, Klein discloses a vibrating jewelry item wherein:

- Said housing further includes means formed therethrough for said actuating means, to selectively engage said vibrating motor unit 14 with said power source 13 (col.4, ln.33-37).

As to claim 13, Klein discloses a vibrating jewelry item wherein:

- Said attachment means includes a post 18 inserted through a wearer's pierced body part, and a keeper 26 to retain said item on the pierced body part.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein USPN6419649 in view of Riley USPN5048310.

As to claim 3, Klein fails to disclose or suggest:

- Said ends of said first and second sections of said housing include thread means for threadingly connecting said sections together.

It is commonly known that snap-fit structures and threaded members are equivalent means of securement. Riley discloses a jewelry apparatus wherein a snap-fit structure (fig.11)

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and a threaded fastener (fig.12) which are shown to be art recognized equivalents and interchangeable means of mounting one member onto another. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the snap-fitted first and second sections disclosed by Klein to be threadingly connected, as taught by Riley, because they are equivalent means of connecting that are readily substitutable.

As to claim 14, Klein fails to disclose or suggest:

- Said keeper comprises a ring.

Riley discloses a keeper element 1 that also comprises a ring 4 (fig.1) useful for mounting of a decorative pendant therein (col.4, ln.32-39). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the keeper element disclosed by Klein to have a ring, as taught by Riley, to provide for the hanging of decorative pendants.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klein USPN6419649 in view of Erickson USPN4781036.

As to claim 8, Klein fails to disclose or suggest the following limitations:

- Said keeper is configured to receive a chain, charm, and other ornamental jewelry piece item.

Erickson discloses a jewelry item wherein a keeper 18 is configured to receive a charm 20 to adjust to the mood of the wearer or the occasion (col.2, ln.1-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the keeper disclosed by Klein to be configured to receive a charm, as taught by Erickson, to adjust the jewelry item to the mood of the wearer or the occasion.

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Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein USPN6419649 in view of Moody USPN4840045.

As to claim 9, Klein discloses a vibrating jewelry item wherein:

- Said attachment means for securing the vibrating body jewelry item to a body part of a user is a bar 18 and keeper 26.

Klein fails to disclose or suggest the following limitations:

- Said attachment means for securing is a clamp.

Moody discloses the use of a clamp as an attachment means for jewelry so jewelry can be worn in unpierced body parts (col.1, ln.18-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the attachment means disclosed by Klein with a clamp, as taught by Moody, to allow the jewelry to be worn on unpierced body parts.

As to claim 10, Klein fails to disclose or suggest:

- Said clamping device includes a movable jaw and a fixed jaw.
- Said movable jaw mating with a stationary jaw to form said clamp device.

Moody discloses the use of a clamp comprising a movable jaw 16 mating with a stationary jaw 14, as an attachment means for jewelry so jewelry can be worn in unpierced body parts (col.1, ln.18-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the attachment means disclosed by Klein with a clamp, as taught by Moody, to allow the jewelry to be worn on unpierced body parts.



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*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USPN4353225 discloses jewelry for animals.

USPN5097679 discloses screw it together jewelry.

USPN5413551 discloses a spherical massage device.

USPN5553467 discloses an adjustable ear clip.

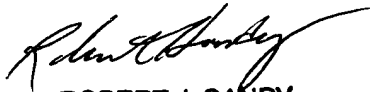
USPN6026659 discloses a body jewelry device.

USPN6244073 discloses a body jewelry cap.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y. Ho whose email address is thomas.ho@uspto.gov and telephone number is (703) 305-4556. The examiner can normally be reached on M-F 9:30AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-3366.

TYH  
September 25, 2002

  
ROBERT J. SANDY  
PRIMARY EXAMINER